

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

CAPITOL RECORDS, LLC, *et al.*,

Plaintiffs,

v.

VIMEO, LLC d/b/a VIMEO.COM, *et al.*,

Defendants.

---

CASE NO. 09 CV 10101 (RA)

---

EMI BLACKWOOD MUSIC, INC., *et al.*,

Plaintiffs,

v.

VIMEO, LLC d/b/a VIMEO.COM, *et al.*,

Defendants.

---

CASE NO. 09 CV 10105 (RA)

**DECLARATION OF**  
**ANDREW PILE**

I, Andrew Pile, declare as follows:

1. I am currently Vice President of Product and Development at Vimeo, LLC.<sup>1</sup> I submit this declaration in support of Defendants' Motion for Summary Judgment. Except as otherwise indicated, I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

**My Work at Vimeo**

2. I joined Connected Ventures, LLC ("Connected Ventures") in September 2005 as a developer, assigned to work on various Connected Ventures websites (which principally included, at

---

<sup>1</sup> For simplicity, I refer to both the Vimeo, LLC business entity (and predecessors) and the Vimeo service (available through <http://vimeo.com>) as "Vimeo" unless otherwise noted.

the time, the website Collegehumor.com). At that time, Vimeo was a business operated by Connected Ventures. Beginning in 2006, I started performing development work for Vimeo on a part-time basis, while continuing my other work for Connected Ventures.

3. I became a full-time developer for Vimeo in January 2007, working on the technical aspects of the website, including programming. I continued in this role through and after the acquisition of Connected Ventures by IAC/InterActiveCorp ("IAC") in the summer of 2006.

4. I became Vice President of Product and Development at Vimeo in or around December 2009. In this role, I supervise all technological aspects of the Vimeo website, including development and programming. In the course of my duties, I have become familiar with Vimeo's products and services and the technical tools it uses to enforce its Terms of Service and copyright policy.

### **History of Vimeo**

5. Development on the Vimeo website began in 2004 by employees of Connected Ventures. The idea was to create an online platform to enable users to upload and share original, user-generated videos. The website was publicly launched in early 2005.

6. In its early years, Vimeo had a small (but passionate) user base. As of April 2007, Vimeo had approximately 40,000 registered users. Vimeo's user base expanded to approximately 250,000 registered users by April 2008.

7. From mid-2008 until the present, Vimeo has continued to experience significant growth. In January 2009, Vimeo had approximately 1 million registered users, with approximately 6,400 new videos being uploaded daily. By December 2009 had approximately 2.3 million registered users, with about 11,000 new videos being uploaded daily. As of April 2011, Vimeo had approximately 6.4 million registered users, with about 40,000 new videos uploaded to Vimeo daily.

Today, Vimeo has approximately 12.3 million registered users, with about 43,000 new videos being uploaded daily, and more than 31.7 million videos in its database. The total number of videos ever uploaded to Vimeo (which includes now-deleted videos) exceeds 45.5 million.

8. I understand that Plaintiffs have identified approximately 199 videos in their Complaints as allegedly infringing. This represents approximately 0.0004% of the more than 45.5 million videos that have ever been uploaded to Vimeo.

#### **How Users Upload Videos to Vimeo**

9. Any member of the public with access to the Internet can visit and watch a video on Vimeo (available at <http://vimeo.com>), so long as the user who uploaded it has made it publicly available.

10. The process of uploading a video to Vimeo is initiated by Vimeo users. Vimeo makes the uploaded video playable on Vimeo through fully automated means that do not involve the intervention or active involvement of Vimeo staff. Further, Vimeo's staff does not watch any videos before they have been uploaded and made available for viewing on Vimeo.

11. Users must first register and create a Vimeo account before they can upload a video. To register, the user must provide a user name, password, and e-mail address, and agree to Vimeo's Terms of Service. Vimeo verifies user email addresses by sending an email to that address and requiring the user to respond to it. (On very limited occasions, Vimeo staff can manually verify users who have difficulty with this process and have asked for help.) Attached hereto as **Exhibit 1** is a true and correct copy of a printout of Vimeo's registration page. Recently, Vimeo added the ability to sign up using a Facebook account. The Facebook sign-up process differs from the standard process in that it does not require the user to provide an email address since the user has already provided one to Facebook (which Vimeo obtains when authenticating the user's account with

Facebook). Regardless of how one creates a Vimeo account, the user must agree to Vimeo's Terms of Service (publicly available at <http://vimeo.com/terms>).

12. After a user has created and logged into a Vimeo account, the user may then upload a video to her Vimeo account in various ways, including through the Vimeo website, a Vimeo mobile application, or a third-party application that uses Vimeo's application programming interface (such as Apple iMovie). The majority of uploads occur through the Vimeo website. No matter which method the user chooses, the underlying process of uploading a video to Vimeo follows the same basic steps: The user must select a video file that she wishes to upload from her computer, phone, e-mail, or other storage device, and click a button instructing the upload.

13. When the user uploads a video through the Vimeo website, she sees an "Upload" page, publicly available to registered users at <http://vimeo.com/upload>. The Upload Page presents users with the following text:

Please follow these rules:

1. I will upload videos I created myself. + More
2. I will not upload videos intended for commercial use. See commercial options. + More
3. I understand that certain types of content are not permitted on Vimeo. + More

Still have questions? Read the full uploading guidelines.

Clicking on "uploading guidelines" brings the user to the Community Guidelines (publicly available at <http://vimeo.com/guidelines>).

14. Pressing the "+ More" link adjacent to the first rule expands to reveal the following text:

- You must own or hold all necessary rights (copyrights, etc.) to your video.

- “I have permission” does not mean you created it.
- Directors, DPs, editors, musicians, graphic effects artists, and actors may upload works to which they have contributed significantly.
- Public domain videos are not allowed.
- Please add your role/involvement in the video description to avoid accidental deletion.

15. Vimeo also makes its rules available through its Terms of Service, which incorporate the Community Guidelines.

16. In the course of the uploading process, the user has the option of providing a title, description, and “tags” (or keywords) for the video. After providing this information (or declining to do so), the video uploading process is complete, unless there is some technical problem that interferes with the upload or the user has exceeded an applicable quota.

17. Any video that has previously been removed from Vimeo as the result of a DMCA takedown notice is placed on a “blocked video” list, and Vimeo employs an automated process to detect if videos that users attempt to upload have previously been placed on this list. Specifically, when a user attempts to upload a video, Vimeo automatically performs a “MD5 checksum” on the video file and checks that identifier against the “blocked video” database. MD5 checksum is a form of “hash” or “digital fingerprint” test that compares the uploaded file’s unique fingerprint to that of a previously banned video file. If there is a match, Vimeo automatically aborts the upload process, no matter who attempts to upload it.

18. Users have the technical ability (but not legal right) to upload videos to Vimeo whether or not the videos violate Vimeo’s Terms of Service. Vimeo does not (and as a practical matter, cannot) manually screen videos for particular content prior to their being uploaded to the website.

### **Storing and Transcoding User Videos**

19. Vimeo users are able to upload video files in many (though not all) video file formats. Each time a user uploads a video, Vimeo automatically converts the video file into several formats that most Internet browsers and other electronic devices (such as mobile phones) can accommodate (for example, .MP4, .FLV and H.264 formats). This is a process known as “transcoding,” and it occurs automatically without any human intervention. Transcoding is a routine, near-universal process used by numerous video-sharing websites. For example, I am aware that YouTube transcodes video files uploaded by users in a similar manner to Vimeo.

20. After transcoding, multiple transcoded videos are uploaded onto a long-term storage server where they will remain. Depending upon the user’s account type and settings, Vimeo may also store the original file(s).

### **Viewing Videos on Vimeo**

21. Anyone with Internet access and standard Internet browsing software can view for free the videos on Vimeo that the uploader has made publicly accessible. In addition, Vimeo users can view videos on mobile devices (either through the Vimeo mobile page or mobile applications) and PC TV devices. Users initiate video playback by visiting Vimeo and selecting the videos they wish to view. The choice of whether and which videos to view is made entirely by the user.

22. Vimeo allows users to view videos stored on its servers through a process known as “streaming.” Streamed files can begin playing on a user’s computer before the entire video file has been fully transmitted. In response to a playback request, Vimeo automatically streams a copy of the requested video from one of its video servers to the user’s device, where it plays for the user to watch. In addition, to facilitate users’ ability to view videos, Vimeo permits users to download videos unless the uploader has disabled that functionality.

**Efforts to Enforce Vimeo's Terms of Service**

23. While Vimeo does not prescreen videos prior to uploading, Vimeo employs various tools to help identify and remove videos that violate its Terms of Service (which incorporate the Community Guidelines), and terminate such accounts in appropriate circumstances. Vimeo primarily does this through the use of computer programs (referred to as “Moderator Tools” or “Mod Tools”) that Vimeo has developed to help Vimeo’s staff moderate the Vimeo website.

24. There are two main reasons why Vimeo takes these steps. First, videos that are not user-generated, such as full-length movie clips, television shows and the like, are typically much longer, on average, than user-generated videos and subsequently drain resources and slow the operations of the website. In fact, the initial impetus for developing the moderator tools described below was to identify and eliminate these videos for the purpose of improving the functionality of the website. Second, Vimeo removes videos that violate its Terms of Service to set an example for users and demonstrate that Vimeo takes these policies seriously.

25. **Flagging.** Vimeo has a “flagging” feature, which permits registered users to notify Vimeo employees of videos that they believe violate Vimeo’s Terms of Service. When users flag videos they are given the option to provide the reason they believe the video is inappropriate by selecting from various pre-set options, including “[u]ser did not make this: The person who uploaded this video obviously didn’t make it (it’s a TV show, movie trailer, or ripped from elsewhere the web).” The flagging interface also explains how to submit a DMCA claim.

26. When a video is flagged, it is queued for review by a Community Moderator in the “Flagged” Mod Tool. That Community Moderator evaluates the clip in question and determines whether or not to remove the video and, potentially, the user.

27. ***Other Mod Tools.*** Vimeo has developed a number of other Mod Tools designed to locate videos that, based upon Vimeo's experience, may contain content that violates Vimeo's Terms of Service. Even in the absence of a valid DMCA takedown notice, certain Vimeo employees—those with “Moderator” status—have the ability to, and regularly do, remove videos and terminate user accounts if they believe that a particular user is violating Vimeo's Terms of Service.

28. The Mod Tools utilized by Vimeo to identify potentially problematic content include: “Gainers” (which identifies videos that have recently received a large number of views); “Movie Search” (which identifies videos that result from searching the Vimeo website for current film titles); “Sweet Spot” (which identifies videos that are approximately as long as a typical half-hour or hour-long television program); and “User Binge” (which identifies users who are uploading a large number of videos in a short period of time). Videos and/or users identified by one of these Mod Tools are manually reviewed by Vimeo staff. Vimeo also has developed the following Mod Tools to assist Community Moderators: “Thin Ice” (which identifies users who were previously instructed to remove content in violation of Vimeo's Terms of Service); “Player Blacklist” (previously called “Moogaloop Blacklist,” which prevents external websites from embedding Vimeo content); and “Email Block” (previously called “User Block,” which identifies email addresses that have previously been banned from Vimeo and prevents them from signing up for an account). Attached hereto as **Exhibit 2** is a true and correct copy of a printout of Vimeo's Mod Tools page as it existed on June 1, 2010.

29. Vimeo has created tools specifically to assist it with DMCA takedown notices. The “DMCA” Mod Tool allows a Moderator to remove videos from the public-facing website and enter the name of the third party rights holder that sent the DMCA notice. Attached hereto as **Exhibit 3** is a true and correct copy of a printout of Vimeo's internal DMCA takedown page as it existed on June



1, 2010. In addition, Vimeo has created a public-facing DMCA claim webform (available at <http://vimeo.com/dmca/claim>), to make it easier for copyright holders (who are also registered Vimeo users) to submit DMCA takedown notices.

### **Purgatory and Rap Sheet Mod Tools**

30. “Purgatory” is a Mod Tool that keeps track of videos and users that have been removed from the public website for any reason, including deletions initiated Vimeo staff and users themselves. Purgatory was active by October 2008.

31. Purgatory collects and maintains all videos and accounts (and related metadata) that have been removed from Vimeo’s public-facing website. This includes videos and accounts that were removed due to DMCA takedown notices.

32. When a video is placed in Purgatory, it is no longer accessible to anyone except Vimeo employees with “Moderator” status. It will remain in Purgatory for a certain amount of time, depending on the reason why the video was removed from the public website. This allows Vimeo staff to restore a user’s video in the case of an accidental deletion. A video removed as a result of a DMCA takedown notice will remain in Purgatory indefinitely and will not be restored unless Vimeo is permitted to do so.

33. When a user account is placed in Purgatory, it is locked and disabled; only Vimeo employees with “Moderator” status can access the account. In addition, all of that user’s videos are automatically placed in Purgatory too. A user account placed in Purgatory for DMCA reasons will remain there indefinitely and will not be restored unless Vimeo is permitted to do so.

34. Related to Purgatory is a Mod Tool called a “Rap Sheet,” which provides a summary of each user’s historical activity on Vimeo. The Rap Sheet lists, among other things, all videos that the user has posted (but not deleted) and all of the user’s videos currently in Purgatory (which will include all videos removed due to earlier DMCA takedown notices that have not been restored). The Rap Sheet also identifies the total number of videos that are in Purgatory for DMCA reasons so that Vimeo staff can determine whether the user should be considered a repeat infringer under Vimeo’s DMCA policy. Attached hereto as **Exhibit 4** is a true and correct copy of a printout of a user’s Rap Sheet as of October 22, 2010.

35. Finally, a separate table tracks information about the name of the third party that requested a DMCA takedown so that Vimeo can display this information on a page at the URL where the video was formerly located.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

DATED: September 7, 2012  
New York, New York



---

Andrew Pile